

NCBCO-S

18 October 1978

Honorable Stephen Tymcio
Mayor, City of Middleburg Heights
15700 Bagley Road
Middleburg Heights, OH 44130

US EPA RECORDS CENTER REGION 5



416294

Dear Mayor Tymcio:

Thank you for your letter of 3 October 1978 regarding Lake Abram and surrounding wetlands.

My office was informed on 23 September 1977 of the alleged fill operation in Lake Abram and surrounding wetlands. A preliminary investigation was conducted on 4 November and a more detailed joint agency investigation was conducted on 17 November. Agencies represented at this meeting included the Corps of Engineers, the U.S. Fish and Wildlife Service and the Ohio Department of Natural Resources.

The results of the joint site inspection revealed that Costa Cement Contracting Company and Fabrizi Trucking and Paving were placing fill in a freshwater wetland without a Department of the Army permit as required by Section 404 of the Federal Water Pollution Control Act Amendments of 1972. Both firms were ordered to cease all fill operations in the wetland by letter dated 7 December 1977. Surveillance of the area indicates they are complying with my order. I do not intend to order additional wetland studies of the area, however, surveillance will continue to insure compliance with my order. In addition, I do not intend to take further action unless my cease and desist order is violated.

I believe the above information answers questions (1), (4) and (7) of paragraph Five of your letter. The following is a response to the other questions.

(2) Wetlands are those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(3) The Corps administers certain laws enacted by Congress for the protection and preservation of waters of the United States specifically certain sections of the River and Harbor Act of 3 March 1899 and Section 404 of the Federal Water Pollution Control Act of 1972. I am

NCBCO-S

Honorable Stephen Tymcio

enclosing a copy of the Federal Register dated 19 July 1977. The register contains the statutory authorities and general and special policies and procedures applicable to the review of applications for Department of the Army permits. The authorities to issue permits are outlined on page 37134 and related legislation is contained on page 37135. For quick reference, I suggest you look to pages 37139 and 37140 for information concerning the review of applications being considered under Section 10 of the River and Harbor Act of 3 March 1899. A list of navigable waters of the United States is at Inclosure Two. These waters are regulated by the Buffalo District in the administration of Section 10. For regulations and our jurisdiction concerning Section 404, please refer to pages 37144 through 37147. The remaining portions of the Federal Register contains guidelines on processing, public hearings, enforcement, etc.

(5) Investigations of improper filling in wetland areas and other violations are performed when a report is sent to our office from local State or Federal agencies or concerned citizens. Many times violations are detected by routine surveillance. The initial evaluation is conducted by a Corps investigator. If the investigator's evaluation indicates the need, a biologist is sent to the area to perform a wetland evaluation. The wetland evaluation in the Lake Abram area was furnished to you by letter dated 15 February 1978.

(6) This question is answered in the pages referred to in the Federal Register.

I have instructed Mr. Fred Mueller of my staff to contact you prior to any investigation in your area. I cannot assure you that I will furnish you a copy of his investigation since some documents are considered working papers or papers developed for preparation of litigation and are exempt for release under the Freedom of Information Act.

Thank you for your interest in our program. If you have any questions, please contact Mr. Richard Korpanty at (716) 876-5454, extension 2312.

Sincerely yours, *Richard Korpanty*

CF: NCBCO-S

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